IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITON NO.5801 OF 2001

Chhatrapati Sahakari Sakhar Karkhana
Limited,
Bhavaninagar, Taluka-Indapur,
District-Pune, Through
its Maging Director. .. Petitioner

v/s.

Mohan Ambadas Mule,
C/o.Chhatrapati Sahakari Sakhar
Karkhana Limited, Bhavaninagar,
Taluka-Indapur, Dist.Pune. .. Respondent

Mr.K.S.Bapat for the petitioner.

CORAM : SMT.NISHITA MHATRE, J.

DATED : 3rd October, 2005

ORAL JUDGMENT

The petitioner had employed the respondent as a compounder in the sugar factory. Initially, he was appointed as a probationer on 18th July, 1988. He was paid a consolidated salary of Rs.800/- per month. Since the respondent was not being paid the correct wages, he filed complaint being complaint (ULP) No.156 of 1996 alleging an unfair labour practice under items 5 and 9 of schedule IV of the MRTU & PULP Act. The main complaint of the respondent was that he was not being paid wages in accordance with the wage scale fixed by the Wage Board constituted for the sugar industry.

2. The Industrial Court condoned the delay in

filing the complaint. The Industrial Court found that it was continuous cause of action and therefore, the complaint was maintainable. The Industrial Court, after recording the evidence, has come to the conclusion that unfair labour practices under items 5 and 9 had been committed. On a consideration of the evidence, the Industrial Court was of the view that the respondent was entitled to the wage scale payable to the compounder under the Wage Board scales. The evidence recorded by the Industrial Court indicates that all other persons, except the respondent,working in the department including the earlier compounder and the Aaya were paid wages as per the wages fixed by the Wage Board. The Industrial Court, therefore, allowed the complaint and directed the petitioner to pay wages as per the wage scale fixed by the Wage Board for the period of 90 days preceding the filing of the complaint. It is this order which is impugned in the present petition.

3. The main grounds raised in the petition are with regard to their being no unfair labour practice under item 9 since the wages for the post of compounder are not fixed under the Wage Board. According to the petitioner, only confirmed employees were entitled to get benefits of the award of the Wage Board. The other contention raised in the petition is that item 5 of schedule IV is not applicable since this item does not warrant comparison between one individual on the

one hand and several others on the other. The argument is that the term used in the item is set which presupposes a number of workmen and not one individual against several others. It is also pleaded that the complaint was filed beyond the prescribed period of limitation.

4. There is ample evidence on record which the Industrial Court has considered while concluding that an unfair labour practice under item 9 has been committed. The respondent was working as a compounder in the hospital of the petitioner. There is evidence on record to indicate that except the respondent, all others working in this department including the Nurse, Aaya and the earlier compounder were being paid wages as per the award of the Wage Board. The submission of the petitioner that, the award can be made applicable to the employees only if there is an agreement with the recognized union, cannot be accepted. There is no dispute that wages in accordance with the award have been paid to the other workmen. Therefore, the argument that the award has not been accepted by the petitioner Karkhana is without any merit. Furthermore, the evidence on record indicates that it was only the respondent who was being paid consolidated wages. Various other persons were being paid wages as per the award of the Wage Board. Therefore, the Industrial Court can not be faulted for having arrived at the conclusion that an unfair labour practice under item 9 of schedule

IV has been committed.

5. The question now which remains to be considered is that item 5 of schedule IV of the MRTU & PULP Act can be invoked. Item 5 of schedule IV reads thus-

> "5. To show favouritism or partiality to one set of workers, regardless of merits."

6. Section 28 of the MRTU & PULP Act deals with the procedure of filing complaints relating to unfair labour practices. This Section stipulates that when any person engages in or is engaging in any unfair labour practice then any union or any employee or any employer or Investigating Officer may file a complaint regarding such unfair labour practice. The Section does not in any manner preclude an individual employee from filing complaints under the Act. The only embargo or fetter on the right of an individual to file a complaint is found in Section 21 of the Act where if there is a recognised union, then a complaint of an unfair labour practice under items 2 and 6 of Schedule IV can be filed only through that Union. The proviso permits an individual employee to file such a complaint if there is no recognised union. Therefore the right available to an individual to file a complaint under Section 28 read with item 5 of Schedule IV of the Act is not restricted. The argument that complaint under this item can be filed only by a number of employees since item 5

contemplates discrimination as against a set of employees which must be construed in the plural. Item 5 is in respect of an unfair labour practice where an employer shows partiality or favouritism to one set of workers regardless of merits. However, it does not in any manner stipulate that the partiality or favouritism shown towards a set of workers must be qua a number of workers. It only stipulates that a number of workers must be treated differently by the employer as against the person filing the complaint. In the present case, the respondent had contended that all the others in the department where he was working were being paid wages in accordance with the award of the Wage Board, while he was being singled out for unfair treatment. It is in this context that the respondent complained that there is an unfair labour practice committed under item 5 of schedule IV. Therefore, the argument that a complaint alleging unfair labour practice under item 5 of schedule IV can be filed only by individual workman is fallacious. The finding of the Industrial Court that there was an unfair labour practice committed under item 5 need not be disturbed.

7. Rule discharged. No order as to costs.

(SMT.NISHITA MHATRE, J.)